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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 9

Application Number: 09/525,244
Filing Date: March 15, 2000
Appellant(s): HACKER, L. LEONARD

Christopher B. Kilner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 23, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-46 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8). Additionally, the Examiner notes that the Appellant has cited two claim 32's as standing or falling together within Group I and VI. This appears is a typo and the correct Grouping should be claim 32 in Group I and claim 35 in Group VI.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,924,074	*Evans*	*7-1999*
6,076,166	*Moshfeghi et al.*	*6-2000*
6,024,699	*Surwit et al.*	*2-2000*
5,737,539	*Edelson et al.*	*4-1998*
5,823,948	*Ross, Jr. et al.*	*10-1998*
5,772,585	*Lavin et al.*	*6-1998*
6,330,499	*Chou et al.*	*12-2001*

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-2, 5-9, 14, 19-20, 23-27, 32 and 37-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,924,074 to Evans in view of U.S. Patent No. 6,076,166 to Moshfeghi et al.

As per claim 1, Evans teaches a patient-controlled electronic medical record system comprising:

--the claimed a medical information server connected to a network is met by the remote web servers (406, 408, 410, Fig. 24) connected to the wide area network (402, Fig. 24) and the World Wide Web (Web) (404, Fig. 24) (see: column 12, lines 55-63 and Fig. 24);

--the claimed a medical information database connected to the medical information server is met by the electronic medical system that includes remote web servers (406, 408, 410, Fig. 24) and a point of care system (100, Fig. 1) that communicates with a reference database (104, Fig. 1) (see: column 12, lines 55-63 and column 5, lines 20-27);

--the claimed a plurality of patient medical records stored on the medical information database is met by the electronic medical record system includes several databases of electronic information, such as the medication manager (302, Fig. 18) and the data manager (202, Fig. 12) (see: column 13, lines 57-65);

--the claimed a plurality of medical provider computers connected to the network and having software to communicate with the medical information server is met by the multiple hospital computers and servers (430, 432, 434, Fig. 34) connected to the wide area network (402, Fig. 24) and the World Wide Web (Web) (404, Fig. 24) (see: column 12, lines 55-63, column 6, lines 37-55 and Fig. 24). In addition, the servers, computers and peripherals communicate using an operating system supporting Web browsers on computer networks, such as Unix, Novell Netware or Apple System 7.0 (see: column 13, lines 31-56).

Evans teaches a tiered password system to limit access to certain information in a patient's medical record from the system administrator down to the patient (see: column 15, lines 9-32).

Evans fails to expressly teach:

--the claimed means for patients to allow medical provider computers to access patient selected portions of the patient's medical record for viewing and adding to the patient's medical record; and

--the claimed means for patients to access all portions of their medical record using browser software on a computer connected to the network.

Moshfeghi et al. teaches a system of personalizing hospital's web site regarding access privileges for example, all physicians who treat a patient may see that a patient is undergoing psychiatric treatment, but the details of this sensitive are may be privileged to the attending psychiatrist and patient (see: column 5, lines 27-45). In addition, the patients are able to see their own computer based patient record (CPR) in full detail (see: column 5, lines 43). Moshfeghi further teaches that the user privileges and access control rules are patient dependent (see: column 6, lines 61-62).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was to include the limiting of access privileges to view patient records as taught by Moshfeghi et al. within the electronic medical records system as taught by Evans with the motivation of keeping records of "VIP" patient (politicians, actors, etc.) restricted, due to the increasing potential for adverse publicity and blackmail (see: Moshfeghi et al. column 5, lines 39-42).

As per claim 2, Moshfeghi et al teaches the claimed medical information server includes software means for formatting patient-selected medical data from their medical record for viewing by patients. The feature is met by the patients using the system being able to see their own computer based patient record (CPR) in full detail (see: column 5, lines 43).

As per claim 5, Evans teaches the medical provider computer software is a browser client. The limitation is met by the servers, computers and peripherals communicating using an operating system supporting Web browsers on computer networks, such as Microsoft Windows NT, Windows 95 or Windows for Workgroups, Unix and Novell Netware or Apple System 7.0 (see: column 13, lines 31-56).

As per claims 6-7, Evans teaches the network is a public network and the public network is the Internet. The limitation is met by the World Wide Web (Web) (404, Fig. 24) portion of the Internet (see: column 12, lines 55-63 and Fig. 24)

As per claim 8, Evans teaches a means to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record is a patient-supplied unique access identification means. This limitation is met by the physicians that can use a point of care system to enter, access, process, analyze and annotate data from patient records in real-time (see: column 5, lines 10-13). In addition, the patient locator (200, Fig. 12) generates a unique patient identifier (PID) (221, Fig. 14) for each patient and creates and maintains a table having PIDs for all patients who have data in the patient data repository (102, Fig. 1) (see: column 8, lines 19-27).

As per claim 9, Evans patient-controlled electronic medical record system of claim 8, wherein the patient supplied unique access identification means is selected from the group consisting of alpha-numeric pass phrases, smart cards, biometric samples, bar coded cards, and bar coded bracelets. The feature is met by all data records related to a patient (211, 212, 213, 214, 215, 216, 219, Fig. 13) (214, ICD code or CPT code) include and reference the patient's unique PID as shown in FIG. 13 (see: column 8, lines 19-27).

As per claim 14, Evans teaches the claimed server to include software to schedule patient appointments. This feature is met by the appointment icon (128, Fig. 3) used to schedule appointments for the patients (see: Fig. 3).

As per claim 19, 20, 23-27 and 32, they are rejected for the same reasons set forth in claims 1, 2, 5-9 and 14.

As per claims 37-38, Evans teaches transferring hard copy medical record information into an electronic format for storage in the medical information database. This feature is met by the converter (372, Fig. 23) receives information from the data source (370, Fig. 23) and transforms the information into an electronic format compatible with the EMR system. For example, to input physical data (374, Fig. 23) such as paper or image based data, into a patient record, the converter (372, Fig. 23) comprises a scanner (424, Fig. 24) to digitize the physical data into a binary file format for incorporation into the patient's record which is stored in database (see: column 12, lines 35-63 and column 5, lines 20-27).

As per claims 39-40, Evans a means for collecting and transferring patient medical record information from other sources in an electronic format for storage in the medical information database This feature is met by the converter (372, Fig. 23) receives information from the data source (370, Fig. 23) and transforms the information into an electronic format compatible with the EMR system. For example, to input physical data (374, Fig. 23) such as paper or image based data, into a patient record, the converter (372, Fig. 23) comprises a scanner (424, Fig. 24) to digitize the physical data into a binary file format for incorporation into the patient's record which is stored in database (see: column 12, lines 35-63 and column 5, lines 20-27).

As per claims 41-42, Evans teaches the claimed auditing the patient medical record information from other sources and correcting the patient medical record information from other sources as needed. This feature is met by the electronic medical record (EMR) system that provides a complete audit trail for all patient data that in turn, permits inexpensive analysis of outcomes, utilization and compliance. For example, outcomes typically refer to the effectiveness of a treatment plan. Thus, the EMR system enables a healthcare provider to analyze patient recovery times and incurred costs to measure the efficacy of the treatment plan (see: column 14, lines 42-51).

As per claims 43-44, Evans teaches the claimed means for transferring a complete patient medical record from the medical information database to a medical provider for temporary offline use. This feature is met by the patient data repository (102, Fig. 1) that communicates with external sources to obtain patient data, such as laboratory test results and x-ray images, and transfers patient information, such as prescriptions for medication, from the electronic medical record (EMR) system to other healthcare providers (see: column 4, lines 64 to column 5, lines 27).

3. Claims 3-4, 15, 21-22 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,924,074 to Evans and U.S. Patent No. 6,076,166 to Moshfeghi et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,024,699 to Surwit et al.

As per claims 3-4, the combine teachings of Evans and Moshfeghi et al. fail to teach a software means for generating medical reminders to patients and the medical reminders are transmitted by a medium selected from the group consisting of electronic mail, facsimile transmission, telephone, telephonic text messaging, pager, and mail.

Surwit et al. teaches a case manager system that tracks patient appointments using a task reminder system to generate periodical follow-ups to the patient to schedule an appointment and the patient may be contacted via e-mail, telephone or facsimile transmission (see: column 20, lines 48-63).

One of ordinary skill in the art at the time the invention was made would have found it obvious to include the case manager system as taught by Surwit et al. within the combined system as taught by Evans and Moshfeghi et al. with the motivation of notifying and verify a patient regarding appointment compliance (see: Surwit et al. column 20, lines 62).

As per claim 15, the combine teachings of Evans and Moshfeghi et al. fail to teach the server that further includes software and interface means to notify patients with reminders or adjustments of scheduled appointments by means selected from the group consisting of telephone voice messaging, facsimile, wireless text messaging, e-mail, and mail.

Surwit et al. teaches a case manager system that tracks patient appointments using a task reminder system to generate periodical follow-ups to the patient to schedule an appointment and the patient may be contacted via e-mail, telephone or facsimile transmission (see: column 20, lines 48-63).

The motivation for combining the teachings of Evans, Moshfeghi et al. and Surwit are as discussed above in the rejection of claim 3, and incorporated herein.

As per claims 21-22 and 33, they are rejected for the same reason set forth in claims 3-4 and 15 respectively.

4. Claim 10 and 28 are rejected under 35 U.S.C. 103 (a) as being unpatentable over U. S. Patent No. 5,924,074 to Evans and U.S. Patent No. 6,076,166 to Moshfeghi et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,737,539 to Edelson et al.

As per claim 10, Edelson et al. teaches software to check patients' written and filled prescriptions for interactions, allergies, age-dosage suitability, weight-dosage suitability, and sex-appropriateness. This limitation is met by the system, which can review the patient's history in relation to the selected drug and alert the physician to any relevant allergies, one-on-one drug interactions or, if appropriate, multiple drug interactions (see: column 39, lines 64 to column 40, lines 4). As well as calculating and suggesting effective dosages by taking into account patient characteristic such as height, weight, age, sex, pregnancy and the like (see: column 25, lines 64 to column 26, lines 3).

As per claim 28, it is rejected for the same reasons set forth in claim 10.

5. Claims 11-13 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,924,074 to Evans and U.S. Patent No. 6,076,166 to Moshfeghi et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,823,948 to Ross, Jr. et al.

As per claims 11-13, Ross, Jr. et al. the server including software to track medical provider inventories, to produce inventory reports for medical providers and to automatically reorder depleted inventory items for medical providers. These features are met by the inventory control module that controls inventory and access for pharmaceutical and other materials used in the hospital and includes an automatic reordering system linked to other hospital (see: column 10, lines 66 to column 11, lines 2).

As per claim 29-31, they are rejected for the same reasons set forth in claims 11-13.

6. Claims 16 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,924,074 to Evans and U.S. Patent No. 6,076,166 to Moshfeghi et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,772,585 to Lavin et al.

As per claim 16, the combined teachings of Evans and Moshfeghi et al. fail to teach software to track patient medical costs.

Lavin et al. teaches software to track patient medical costs. This feature is met by the medical professional compiling a database of patient including demographic, insurance, and billing information (see: column 2, lines 5-7). The billing information is a form of tracking patient's medical cost.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the software to track patient medical costs as taught by Lavin et al. within the combined system as taught by Evans and Moshfeghi et al. with the motivation of providing the current and up to date account information, thereby allowing the patient to be informed of all incurred medical expenses.

As per claim 34, they are rejected for the same reasons set forth in claim 16.

7. Claims 17, 35 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,924,074 to Evans and U.S. Patent No. 6,076,166 to Moshfeghi et al. as applied to claim 1 above, and further in view of Official Notice.

As per claim 17, the combined teachings of Evans and Moshfeghi et al. fail to teach server includes software to anonymously identify appropriate patients or anonymously extract appropriate data for medical research requests.

It is old and well known in the medical industry that researcher use other criteria with regards to gathering patient information such age, height, weight and sex rather than a patient's name to determine if a particular medication is working for a specific sample group. Therefore, it would have obvious to a person of ordinary skill in the art at the time the invention to include software to anonymously identify appropriate patients within the combined system as taught by Evans and Moshfeghi et al. with the motivation of gathering accurate results from a selected sample group to better determine the effectiveness of a particular medical treatment.

As per claim 35, it is rejected for the same reasons set forth claim 17.

As per claims 45-46, Evans fails to explicitly teach an e-mail client and means for sending patient medical record information associated with the server responds to an order selected from the group consisting of preauthorized events, patient requests, and medical provider requests sent to an autoresponder using patient supplied information.

Since Evans teaches an electronic medical records (EMR) system that includes a way for external sources to request data (290, Fig. 17B) from a patient record and communication interface (274, Fig. 17B) that sends the converted data to the external source at (298, Fig. 17B) (see: column 10, lines 59 to column 11, lines 9). One of ordinary skill in the art at the time the invention was made would have found it obvious to include an e-mail client for sending medical information at the request of the patient within the electronic medical record (EMR) system as taught by Evans with the motivation of providing a fast and effective way to request and transmit electronic patient medical records.

8. Claims 18 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,924,074 to Evans and U.S. Patent No. 6,076,166 to Moshfeghi et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,330,499 to Chou et al.

As per claim 18, the combined teachings of Evans and Moshfeghi et al. fail to teach software to respond to patient-preauthorized requests from third parties to electronically transmit medical record information to a remote location.

Chou et al. teaches a system and method for vehicle diagnostic and healths monitoring that include remote health monitoring and diagnostic services and other services of Emergency/Mayday such as ONSTAR or concierge services (column 9, lines 66 to column 11). The ONSTAR or concierge service could relay information regarding a patient health condition to hospital or physician prior to the patient arrival essential sending medical record information to a remote location.

One of ordinary skill in the art at the time the invention was made would have found it obvious to include remote health monitoring and diagnostic services to respond to requests from third parties to electronically transmit medical record information to a remote location as taught by Chou et al. within the combined system as taught by Evans and Moshfeghi et al. with the motivation of providing a physician with up to date and accurate patient information in order to more efficiently and effectively treat the patient.

(11) Response to Argument

In the Appeal Brief filed 23 May 2003, Appellant makes the following arguments:

(A) The Examiner's rejections fails to establish a *prima facie* case of obviousness using three basic criteria (1) there must be some suggestion or motivation to combine or modify the

references, (2) there must be a reasonable expectation of success, and (3) the prior art must teach or suggest each and every limitation of the claimed invention.

(B) Not all claim limitations are shown in that applied prior art such as a means for patient to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Appellant's claimed invention (see paper numbers 2 and 5).

As such, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the

references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

The Examiner is concerned that Appellant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

(i) obviousness does not require absolute predictability;
(ii) non-preferred embodiments of prior art must also be considered; and
(iii) the question is not express teaching of references, but what they would suggest.

Further, according to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein.

According to *Ex parte Berins*, 168 USPQ 374 (Bd. Appeals), there is no statutory limitation as to the number of references that may be used to demonstrate obviousness...not what references expressly state but what they would reasonably suggest to one of ordinary skill in the art. In *In re Conrad*, 169 USPQ 170 (CCPA), obviousness is not based on express suggestion, but what references taken collectively would suggest.

As such, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner both in the prior Office Action, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

In particular, a primary motivation for combining the respective teachings of Evans and Moshfeghi was clearly recited as "...for keeping records of "VIP" patient (politicians, actors, etc.) restricted due to the increasing potential for adverse publicity and blackmail" (see: page 4, first full paragraph of Office Action mailed 8/19/02 – paper number 2). Not only was this motivation explicitly recited in the rejection of the claims, it was based solely on the teachings of the prior art, namely, column 5, lines 39-42 of Moshfeghi et al. As such, the Examiner respectfully contends that the first requirement needed to establish a *prima facie* case of obviousness, namely, a showing of a suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, has been clearly established in the rejection applied in this case.

Furthermore, Appellant's reliance on column 15, lines 18-20 of Evans and column 1, lines 10-12 of Moshfeghi on page 10 of the Appeal Brief as purported evidence that electronic medical records are controlled by a medical institution is not convincing. In particular, column 15, lines 18-20 of Evans merely refers to the scalability of application (i.e., a large healthcare enterprise or single physician office), and not to the control of medical data, per se. Likewise, column 1, lines 10-12 merely establishes that it is the network or intranet (not medical data, in general) that is maintained by a hospital or similar institution.

Rather, the Examiner respectfully submits that Evans is directed to a system that provides several levels of security for access to patient data and ensuring patient confidentiality (Evans; column 15, lines 21-24), and Moshfeghi discloses a system wherein user privileges and access control to patient data is patient dependent (Moshfeghi, column 6, lines 61-62). As such, the Examiner respectfully submits that the proper combination of the above teachings would be a system that provides levels of security for patient access to patient data that is based solely, on patient preferences (i.e., is "patient selected/controlled"). One having ordinary skill in the art at the time that the invention was made would clearly recognize that typically patient preferences with regard to medical information would vary according to different occupations/specialties as well as the nature of relationship between the patient and the medical service provide (see: Moshfeghi; column 5, lines 27-35). As such, the patient's preferences regarding her/his personal medical information would be based on various portions (or layers/levels) of information, and not on the total medical information record, per se.

Thus, the Examiner respectfully submits that Appellant fails to consider that applied references together, as a whole.

Response to Argument (B):

In response to the second argument, not all claim limitations are shown in that applied prior art, the Examiner respectfully contends that Appellant relies on features not expressly recited in the claim.

In particular, claim 1 recites, "means for patients to allow medical provider computer to access patient-selected portions of the patient's medical record for viewing and adding to patient's medical record". Claim 19 recites the step of "providing patients with means to allow

medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record".

It is firstly noted by the Examiner that neither of the above limitations explicitly requires the patient to actively perform a specific act in selecting portions of his/her record for access by medical personnel. Rather, a general structure "to allow" such functionality is required in claim 1 and the passively-recited step of "providing patient" with such a structure is required in claim 19. Further, since the recitation of "means for patients to allow" in claim 1 and "means to allow" in claim 19 does not meet the requirements established in MPEP 2181 for invoking 35 U.S.C., 112, sixth paragraph analysis, these "means" are not limited to what is disclosed in the written description and equivalent thereof.

In so far as Moshfeghi discloses user privileges and access control rules (e.g., structure "to allow") are patient, dependent (see: column 6, lines 61-62) it meets the claimed limitations. Moshfeghi discloses an example wherein "all physicians who treat a patient may see that a patient is undergoing psychiatric treatment, but the details of this sensitive area may be privileged only to the attending psychiatrist and the patient" (column 5, lines 35-39). This clearly establishes that portions of a patients' medical record are accessible only as directed by patient preferences (column 5, lines 39-45 of Moshfeghi).

Appellant's argument that patient dependent is not the same as patient-controlled access to records is non-persuasive because, as noted above, none on the claims require a patient to actively perform a specific act in selecting portions of his/her medical record for access by medical personnel. In addition, Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e.,

"patient-selected passphrase") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In particular, none of the claims require the step or corresponding structure of a patient creating or establishing a passphrase or a patient actively deciding/granting access to a request by a medical provider, as given at page 14, lines 5-13 of Appellant's instant specification.

As such, Appellant's arguments clearly fail to consider the breadth of the invention as presented claimed.

With respect to Appellants' statements at page 14-19 of the Appeal Brief which broadly alleges that the various combination of the applied prior art and Official Notice fails to establish a *prima facie* case of obviousness for the same reasons cited for claim 1, the Examiner respectfully submits that since Appellant's arguments with respect to claims 1 and 19 fails to provide a patentable distinction over the applied prior art of record, all of the Examiners bases of rejection should be maintained. Moreover, the Examiner respectfully submits that such sweeping remarks by Appellant are merely conclusory as they are not supported by any specific argument or evidence that clearly and definitely call into question the basis of the rejections set forth by Examiner. It is respectfully submitted that Appellant's conclusions cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326 F.2d 769, 140 USPQ230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); Mertizner v. Mindick, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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RWM
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